

REMARKS

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claim Amendments

Claims 5-8 have been cancelled, without prejudice or disclaimer.

Objection to Claim 1

Claim 1 is objected due to an informality. Specifically, the Examiner states that the phrase “under acidic conditions” is redundant because the fractionation is done at a pH range of 4.5-5.6, which is inherently acidic.

Applicants respectfully assert that the Examiner has misunderstood the claim language. Specifically, the phrase “under acidic conditions”, and the limitation “pH of 4.5 or higher but lower than 5.6” refer to two separate steps of the process. Specifically, the heating step occurs “under acidic conditions”, while the fractionation step occurs at “pH of 4.5 or higher but lower than 5.6”. Thus, the claim is not redundant.

It is respectfully requested that the objection to claim 1 be withdrawn.

Rejection Under 35 U.S.C. § 101

Claims 6 and 8 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection has been rendered moot by the cancellation of claims 6 and 8.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 3, 5 and 7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Examiner states that claim 3 recites acidic conditions of pH 3.8 to 6.8. The Examiner further notes that claim 3 is dependent upon claim 1, which recites acidic conditions of 4.5 to 5.6. The Examiner takes the position that the pH range of claim 3 is outside the range of claim 1.

It appears that the Examiner has misunderstood the claim language. As discussed above, the “acidic conditions” refers to the heating step, while the “pH of 4.5 or higher and lower than 5.6” refers to the fractionating step. Thus, the “pH 3.8 to 6.8” is further limiting the “acidic conditions” of claim 1, rather than the “pH of 4.5 or higher and lower than 5.6”.

Accordingly, the Examiner’s position is untenable, and this portion of the rejection should be withdrawn.

The rejection of claims 5 and 7 has been rendered moot by the cancellation of claims 5 and 7.

Patentability Arguments

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Rejection Under 35 U.S.C. § 102(e)

Claims 6 and 8 are rejected under 35 U.S.C. § 102(e) as being anticipated by Saitoh et al. (U.S. 6,638,562). This rejection has been rendered moot by the cancellation of claims 6 and 8.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saitoh et al. (U.S. 6,638,562) in view of Ishikawa et al. (U.S. 2005/0175766).

Applicants respectfully note that the Ishikawa et al. reference is not available as prior art. Specifically, the PCT publication of this reference was not published in English, and therefore, the reference (U.S. ‘766) is not available under 35 U.S.C. 102(e).

Furthermore, the publication date of the U.S. ‘766 is after the effective U.S. filing date of the present application, which is October 23, 2003.

Accordingly, since the Ishikawa et al. reference is not available as prior art, this rejection should be withdrawn.

Claims 5 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saitoh et al. in view of the current knowledge in the art. This rejection has been rendered moot by the cancellation of claims 5 and 7.

Conclusion

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

Masahito ISHIKAWA et al.

/Amy E. Schmid/

By: 2009.07.08 16:15:48 -04'00'

Amy E. Schmid
Registration No. 55,965
Attorney for Applicants

AES/emj
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
July 8, 2009